

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUSTAVO SAUCEDO-BELTRAN,

Defendant.

CASE NO. 8:06CR71

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 208) and the motion for leave to proceed in forma pauperis (Filing No. 209) filed by the Defendant, Gustavo Saucedo-Beltran. Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

On February 5, 2007, Saucedo-Beltran was sentenced to 120 months imprisonment and 5 years supervised release. (Filing No. 160.) The Judgment was filed on February 12, 2007. (Filing No. 167.) Saucedo-Beltran did not file a direct appeal; however, he had until March 2, 2007, to do so. Fed. R. App. P. 4(b)(1)(A)(i) & 26(a). His § 2255 motion was filed on May 27, 2008. (Filing No. 208.)

Saucedo-Beltran's conviction became final on March 2, 2007, when his period to file an appeal expired. *Anjulo-Lopez-United States*, 541 F.3d 814, 816 & n.2 (8th Cir. 2008). Under the facts of his case, Saucedo-Beltran had one year from that date to file his § 2255

motion. 28 U.S.C. § 2255(f). Because his § 2255 motion was filed more than one-year after that date, it appears plainly from the face of the § 2255 motion and the record that he is not entitled to relief with respect to his claims arguing that both of his attorneys were ineffective for failing to secure a downward adjustment for acceptance of responsibility and failing to move for dismissal based on a violation of the Speedy Trial Act.

IT IS ORDERED:

1. The Court has completed the initial review of the Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 208);
2. The Defendant's § 2255 motion (Filing No. 208) is summarily denied;
3. The Defendant's motion for leave to proceed in forma pauperis is denied;
4. A separate Judgment will be issued denying the § 2255 motion; and
5. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 6th day of March, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge